

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN EPPERSON,	§
	§ No. 445, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9408009291
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 13, 2010

Decided: October 13, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 13th day of October 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Kevin Epperson, filed an appeal from the Superior Court's July 7, 2010 order denying his sixteenth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in March 1996, Epperson was found guilty by a Superior Court jury of Kidnapping in the First Degree and Unlawful Sexual Contact in the Second Degree. He was sentenced as a habitual offender² to a total of 52 years of Level V incarceration. Epperson's convictions were affirmed by this Court on direct appeal.³ Since that time, Epperson has unsuccessfully sought postconviction relief on fifteen different occasions.

(3) In this appeal from the Superior Court's denial of his sixteenth postconviction motion, Epperson claims that the Superior Court abused its discretion when it denied his latest postconviction motion because he asserted a meritorious claim of a miscarriage of justice under *Cooke v. State*, 977 A.2d 803 (Del. 2009).

(4) It is well-settled that the Superior Court must address the procedural requirements of Rule 61 prior to considering the merits of any postconviction claim.⁴ Epperson's latest postconviction motion is not only time barred under Rule 61(i)(1), it also is procedurally barred under Rules

¹ Supr. Ct. R. 25(a).

² Del. Code Ann. tit. 11, §4214(a).

³ *Epperson v. State*, Del. Supr., No. 214, 1996, Walsh, J. (Feb. 6, 1997).

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

61(i)(2), (3) and (4). There is, moreover, no evidence of a miscarriage of justice under Rule 61(i)(5). It appears that Epperson's latest motion is little more than a repetition of his fifteenth motion, the Superior Court's denial of which this Court recently affirmed.⁵ This Court has ruled that a defendant may not relitigate unsuccessful claims that have been merely refined or restated.⁶ As such, the Superior Court correctly denied Epperson's motion.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ *Epperson v. State*, Del. Supr., No. 52, 2010, Jacobs, J. (Apr. 29, 2010).

⁶ *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992).